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Environmental Protection Agency

**National Superfund Permanent Relocation
Interim Policy; Notice**

ENVIRONMENTAL PROTECTION AGENCY

[FRL-6374-9]

National Superfund Permanent Relocation Interim Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability with request for comment on interim policy on the use of permanent relocation as part of superfund remedial actions.

SUMMARY: The Environmental Protection Agency (EPA) has developed and is requesting comment on an "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions." This policy provides direction to EPA staff on when to consider permanent relocation of residents and businesses living near or on National Priorities List (NPL) sites as part of a Superfund remedial action.

EFFECTIVE DATE: The effective date for this policy is June 30, 1999.

ADDRESSES: Members of the public may request copies of the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions" by postal mail from Docket Coordinator, Headquarters, U.S. EPA, CERCLA Docket Office, (Mail Code 5201G), 401 M Street, SW, Washington, DC 20460, 703-603-9232, or (800) 424-9346. Written comments on the interim policy may be submitted to the above address. EPA expects to hold a meeting in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. Written comments will be accepted up until this meeting.

The "Interim Policy on the Use of Permanent Relocation as Part of Superfund Remedial Actions" and other documents related to development of the policy are also available on the Internet at <http://www.epa.gov/oerrpage/superfund/tools/topics/relocation>.

FOR FURTHER INFORMATION CONTACT: Jo Ann Griffith, phone (703) 603-8774, Region 2/6 Accelerated Response Center, Office of Emergency and Remedial Response (Mail Code 5202G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424-9346 or (703) 412-9810 in the Washington, DC, metropolitan area.

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I. Introduction

The U.S. Environmental Protection Agency (EPA) responds to releases and threatened releases of hazardous substances under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601-9675 ("CERCLA" or "the Act"), enacted by Congress in 1980. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99-499, 100 Stat. 1613 *et seq.* To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 121 of CERCLA, the NCP (40 CFR 300.430) includes evaluation criteria for determining the selection of remedial actions to address releases of hazardous substances. Further the NCP (40 CFR part 300, App. D(g)) states that, "[t]emporary or permanent relocation of residents, businesses, and community facilities may be provided where it is determined necessary to protect human health and the environment."

Today's **Federal Register** document introduces a policy entitled "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions" which provides direction to EPA regional decision makers on when to consider permanent relocation as part of a Superfund remedial action. This policy outlines some of the circumstances under which permanent relocation (in conjunction with cleanup) may be considered to protect human health and the environment.

II. Background

In January 1995, the National Environmental Justice Advisory Council's (NEJAC) Waste and Facility Siting Subcommittee requested that EPA develop a policy to determine when citizens should be relocated away from

residential areas near or affected by Superfund sites. NEJAC was responding to requests from communities who wanted to be relocated away from Superfund sites because of: Fear of the potential health effects; their concerns that they could no longer sell their homes; and the effects on their overall quality of life. Responding to these concerns, the Assistant Administrator of the Office of Solid Waste and Emergency Response issued a memorandum entitled "Relocation of Residents Affected by Superfund Sites" on May 11, 1995, to announce EPA's intent to develop a national relocation policy.

To understand fully the issues associated with relocation, EPA initiated several efforts. First, EPA selected the Escambia Wood Treating Company site in Pensacola, Florida, as a national relocation pilot. On February 12, 1997, a record of Decision (ROD) was issued for the permanent relocation of 358 households. The Agency made a decision to relocate the residences and clean up the properties to levels that are protective for industrial use. Although the pilot project has not yet been completed, several key themes are already emerging. These include the need for EPA to: keep communities informed throughout the process; promptly address community concerns; and factor community concerns into EPA decisions. Upon completion of the relocation pilot, EPA plans to conduct an evaluation to determine what lessons can be applied at future sites and in the final relocation policy.

Second, EPA reviewed a number of sites where cleanups in residential areas had been conducted. To date, the overwhelming majority of Superfund sites located in residential areas are being cleaned up without the need to permanently relocate residents and businesses. For example, at the Glen Ridge, Montclair/West Orange Radium sites in New Jersey, the Bunker Hill Mining site in Idaho, and the Tar Creek site in Oklahoma, EPA has successfully excavated contaminated soils from approximately 5,000 residential properties down to levels of contamination that no longer pose unacceptable risks. By addressing the risks at these three sites through cleanups, people were able to remain in their homes and entire communities were kept intact.

Finally, EPA sponsored a series of stakeholder forums to solicit views and experiences on the subject of relocation. Forums were held between May 1996 and October 1997 with representatives from state governments, local governments, federal agencies, Native

American communities, environmental justice groups (which included citizens from communities near Superfund sites), industries, and public health officials. Input from the relocation forums were considered in developing the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions." There are three documents available that provide information on the relocation forums: "Proceedings: Superfund Relocation Roundtable Meeting" (December 1996, OSWER 9378.0-03, EPA 540-K-96-010, PB96-963254); "Meeting Summaries from the EPA/ICMA Relocation Stakeholder Forums" (May 1998, OSWER 9378.0-12, EPA/540-R-98-002, PB98-963203); and "Relocation Stakeholder Forums Responsiveness Summary" (June 1999, OSWER 9375.1-14, EPA 540-F-98-058, PB99-963206). These documents can be obtained through the CERCLA Docket which is listed in the **ADDRESSES** section of this notice.

Themes that emerged from these meetings included the need for EPA to: Work closely with members of the community to address their issues; involve the community in the decision making process; and communicate openly and honestly. Stakeholders also offered their opinions as to what types of situations warrant the use of permanent relocation at a site. Many believed that there should be clearly defined trigger conditions under which permanent relocation automatically should be offered, regardless of whether or not the residential areas could be cleaned up. One such suggested trigger condition was the presence of adverse health effects for those who live on or immediately adjacent to a Superfund site. There was a range of opinions on what type of health effects data should be considered, and how exactly they should factor into a relocation decision. Some suggested using the baseline risk assessment performed to assess the threats posed by the Superfund site, while others believed any unexplained or anecdotal reports of health effects in the area of the Superfund site should be sufficient to trigger a relocation offer. Still others asked EPA to consider cumulative and synergistic effects of multiple contaminants from other industrial sources.

In addition to health effects, stakeholders recommended that relocation be considered whenever the site has a negative influence on the resident's quality of life. Stakeholders provided anecdotal information about residents who curtailed all outside activities (e.g., allowing children to play outside, socializing outdoors, or

opening windows) because of their fear of living near a Superfund site. Several also expressed concern that EPA might impose restrictions on normal residential activities (e.g., recommending that children not play in their yards) instead of cleaning up residential areas. Others questioned EPA's ability to implement a remedy safely, adding that relocation should be considered whenever cleanups result in dust emissions or heavy equipment in residential areas. Although stakeholders acknowledged that temporary relocations could address these safety concerns, some suggested that EPA offer permanent relocation when temporary relocation exceeds an acceptable duration.

Stakeholders also recommended that EPA make relocation experts available as early as possible whenever relocation is being contemplated as a potential remedial alternative so the community can be better informed of their options before a decision is made. There was also a general view that if relocation is necessary, EPA should seek ways to enhance stability and restore the remaining community's viability by working with other governmental and nonprofit agencies.

III. Summary of Interim Policy

Having proven our ability to successfully restore contaminated property at many Superfund sites, generally, EPA's preference is to address the risks posed by the contamination by using well-designed methods of cleanup which allow people to remain safely in their homes and businesses. This is consistent with the mandates of CERCLA and the implementing requirements of the NCP which emphasize selecting remedies that protect human health and the environment, maintain protection over time and minimize untreated waste.

Because of CERCLA's preference for cleanup, it will generally not be necessary to routinely consider permanent relocation as a potential remedy component. Whenever permanent relocation is under consideration, EPA must ensure that the vacated properties do not pose a current or future risk to human health and the environment for those that may come in contact with the site. As a result, some type of cleanup or other response action generally will be needed to address the vacated properties.

The following list, although not inclusive, provides examples of the types of situations where permanent relocation may be considered. Generally, the primary reasons for conducting a permanent relocation

would be to address an immediate risk to human health (where an engineering solution is not readily available) or where the structures (e.g., homes or businesses) are an impediment to implementing a protective cleanup.

- Permanent relocation may be considered in situations where EPA has determined that structures must be destroyed because they physically block or otherwise interfere with a cleanup and methods for lifting or moving the structures safely, or conducting cleanup around the structures, are not implementable from an engineering perspective. The methods may be technically infeasible because they are too difficult to undertake or success may be too uncertain. Additionally, these methods may prove not to be cost-effective when compared with other alternatives that are protective of human health and the environment.

- Permanent relocation may be considered in situations where EPA has determined that structures cannot be decontaminated to levels that are protective of human health for their intended use, thus the decontamination alternative may not be implementable.

- Permanent relocation may be considered when EPA determines that potential treatment or other response options would require the imposition of unreasonable use restrictions to maintain protectiveness (e.g., typical activities, such as children playing in their yards, would have to be prohibited or severely limited). Such options may not be effective in the long-term, nor is it likely that those options would be acceptable to the community.

- Permanent relocation may be considered when an alternative under evaluation includes a temporary relocation expected to last longer than one year. A lengthy temporary relocation may not be acceptable to the community. Further, when viewed in light of the balancing of tradeoffs between alternatives, the temporary relocation remedy may not be practicable, nor meet the statutory requirement to be cost-effective. Additionally, a shortage of available long-term rentals within the immediate area, may make any potential temporary relocation extremely difficult to implement.

Whenever permanent relocation is to be considered, it is imperative that EPA work with the affected stakeholders (e.g., potentially affected residents and businesses, the state, the tribe, the local government, and other members of the community) to identify the major issues associated with the relocation, including acceptability of relocation to the community, so the issues can be

factored into the remedy selection evaluation.

A permanent relocation funded through CERCLA should be implemented in accordance with the Uniform Relocation and Real Property Acquisition Policies Act (URA), 42 U.S.C. 4600–4655, and applicable regulations, 49 CFR part 24, *et seq.* The purpose of the URA is to ensure that persons displaced as a direct result of a project are treated fairly, consistently, and equitably. EPA uses the services of the U.S. Army Corps of Engineers and U.S. Bureau of Reclamation to assist in conducting relocations because of their expertise in applying the URA. All relocations funded by potentially responsible parties (PRPs), as part of the remedy selected by EPA, should follow procedures comparable to the URA.

As soon as EPA becomes involved at a site, discussions with the community should begin to inform residents and businesses of activities at the site and to allow the opportunity for citizens to become part of the process. These activities may include, but are not limited to: distributing fact sheets to inform the community of site activities; conducting availability sessions for residents to ask questions; posting news releases about site activities; and establishing hotlines to answer citizens' questions.

When a permanent relocation is considered, residents and businesses should understand the multitude of issues associated with the relocation process, including the financial benefits. Communities may want to use a relocation expert or advisor to provide independent assistance to the residents and businesses before EPA makes a decision to relocate. A relocation expert may be accessed through EPA's Technical Assistance Grant (TAG) program.

The TAG program awards grants of up to \$50,000 to eligible communities so they can hire independent technical advisors to interpret information about the site. A relocation expert, funded under a TAG, would need to meet requirements regarding activities and qualifications that apply to TAGs (see 40 CFR part 35, subpart M). Generally, a qualified relocation expert should possess the following credentials: experience in working on family and/or business relocations including knowledge of the URA, and private relocation programs; experience working with real estate brokers and lenders; and demonstrated knowledge of appraisals, title searches, real estate title insurance, and relevant state and local real estate tax laws. In Indian country, the relocation expert should also

understand relevant federal Indian law and tribal law. The relocation expert should be impartial and have the ability to explain the costs, benefits, pitfalls, and other lifestyle effects of relocation to residents. If a relocation decision is made, then EPA will provide relocation counseling services as required under the URA. On a voluntary basis, PRPs may fund a relocation expert for a community.

In addition to addressing the community's information needs, there are other procedural ways the community can be involved in the cleanup process. In response to the President's Executive Order on Environmental Justice 12898, Superfund established the Community Advisory Group (CAG) program. CAGs, comprising representatives with diverse community interests, provide a public forum for community members to present and discuss their needs and concerns about a site. At sites where relocation is being considered, EPA recommends that a CAG or similar-type group be formed to fully engage all the interested parties in a meaningful dialogue about the site cleanup and how relocation may or may not fit into a community's long-term vision and plans.

The prospect of permanent relocation as a remedial action alternative may raise a number of practical problems that should be carefully considered by citizens residing in an affected community. In some communities, a permanent relocation could alter the fabric of a locality by affecting the local tax base and the services that the communities support, including small businesses, schools, churches, and hospitals. Furthermore, permanent relocation can result in the break up of neighborhoods dissolving valuable social cohesion. Community involvement activities at a particular site should be tailored to meet the various needs and concerns of individual citizens within the affected community. EPA should also explore opportunities to partner with other federal agencies (e.g., Department of Housing and Urban Development, Agency for Toxic Substances and Disease Registry, or Department of Transportation), the state, local agencies, non-governmental organizations, and non-profit organizations (e.g., Red Cross) to help identify other potential assistance that may be available to the relocated residents or to those in the community that remain behind.

IV. Additional Considerations for Native Americans, Including Alaska Native Villages

For all decisions affecting federally recognized tribes, EPA is guided both by statute and policies. As provided in CERCLA section 126(b), if the Agency finds that “* * * the proper remedial action is the permanent relocation of tribal members away from a contaminated site because it is cost effective and necessary to protect their health and welfare, such finding must be concurred on by the affected tribal government before relocation shall occur * * *.” If there is nonconcurrence, EPA should work with the tribal government and community on a site-specific basis to address other cleanup options at these sites to protect tribal members' health and welfare. Additionally, CERCLA section 126(b) states that if the tribal government concurs in the relocation decision, then EPA, in cooperation with the Department of the Interior, “* * * shall also assure that all benefits of the relocation program are provided to the affected tribe and that alternative land of equivalent value is available and satisfactory to the tribe. Any lands acquired for relocation of tribal members shall be held in trust by the United States for the benefit of the tribe * * *.”

As discussed previously, EPA conducted a stakeholder forum with Native American and Alaska Native participants. During that meeting, they generally expressed their views that permanent relocations should not be conducted on tribal lands. The participants asked that tribal lifestyles be considered when evaluating any potential relocation alternative. These considerations should include subsistence lifestyles (e.g., hunting/fishing territories, dietary needs, medicinal plants), treaty-protected resources, and religious beliefs tied closely with the land (e.g., sacred religious sites). Due to the close relationship between Native Americans and specific lands, relocation of tribal communities can have a profound impact on community well-being and integrity. Given these unique considerations, EPA expects that tribal government concurrence on the use of permanent relocation, as required by CERCLA section 126(b), may be quite limited.

V. Public Comments

EPA's goal is to receive feedback on the “Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions” from the

widest range of interested parties possible. The policy has already enjoyed the benefits of considerable input and broad public comments will improve it even further. EPA will review the public comments received on the policy and where appropriate, incorporate changes responsive to those comments. In addition, EPA is planning to hold a meeting with a variety of interested parties in approximately six months in order to hear comments on the policy. EPA will announce at a later date the time and location of this meeting. EPA will accept written comments up until the time of this meeting.

This policy is not intended to be, and should not be construed as a rule. Use of the policy is not legally binding on EPA staff or on other parties; rather it is intended to be a tool available for use as site-specific conditions warrant. EPA is seeking public comment at this time to ensure hearing the widest range of views and obtaining all information relevant to the development of the policy. EPA expects to respond to the comments received on the interim policy. EPA staff applying the guidance will have discretion to follow it or diverge from it as site-specific conditions may warrant, and each site-

specific action will be explained in its own record. Please contact individuals and offices listed in the section of this notice entitled **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT** to learn more about the "Interim Policy on the Use of Permanent Relocations as Part of Superfund Remedial Actions."

Dated: July 1, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

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